

(1866) 08 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 2461 of 1865

Nittianand Das

APPELLANT

Vs

Iswar Chandra Das

RESPONDENT

Date of Decision: Aug. 15, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

This appeal must be decreed, and the case remanded to the Collector to try what are the fair and equitable rates with" reference to the grounds of enhancement. It is quite clear that if a ryot sets up a mokurrari pottah as an answer to the landlord"s claim to enhance his rent, and the ryot fails to prove the pottah, or the pottah produced by him is held to be forged, the landlord is not necessarily entitled to enhance the rent to the full amount claimed he is entitled only to a fair and equitable rate, having regard to the grounds of enhancement. If it were otherwise, a landlord might claim to enhance his rent to a crore of rupees for a biga of land, and if the tenant should set up a pottah which should be held to be a forgery, the landlord would be entitled to enhance to the amount claimed. A ryot might purchase a holding or come to one by descent, and might receive with the land a mokurrari pottah, and, believing it to be genuine, might set it up as an answer to a claim to enhance his rent. It would be very unjust, under such circumstances, to hold that his rent might be enhanced to the amount claimed by the landowner, however exorbitant it might be. But even if a ryot set up a mokurrari pottah, which he knows to be forged, he is liable to be punished criminally for using as genuine a document which he knows to be false. But it does not entitle the landowner to enhance the rent beyond a rate which is fair and equitable. The crime of the ryot cannot entitle the landowner to more than his just right. We concur with the Judges who referred the case, and are of opinion that the judgment of the 31st March 1864 cannot be upheld.

¹ As to the effect of dishonest defences, and deciding cases upon suspicion, see Ranee Surnomoyee vs. Maharajah Sutteeschunder Roy,; Sreemanchunder Dey vs. Gopaul Chunder Chuckerbutty ; Pattabkiramier v. Vencatarow Naickeen, 7 B.L.R., 136; Girish Chandra Bose v. Kalikrisna Haldar, post, p. 538; Feaz Bax Chowdhry v. Fakiruddin

Mohamed Ahasan Chowdhry, 9 B.L.R., 456 .

² 31st March 1864, per Steer and Kemp, JJ., Cases selected by Board of Revenue, Vol. II, p. 58.